are citizens of the State in which the body has a legal existence, and no averment or evidence to the contrary is admissible for the purpose of withdrawing the suit from the jurisdiction of the United States Courts. After these repeated statements, the doctrine of the Court must now be deemed to be settled. The corporation is not a citizen, but its members are by an artificial rule of law regarded as citizens of the State by which it is created.

IV. The case of The New England Screw Company *vs.* Bliven & Mead, before NELSON and BETTS, Js., Southern District of New York, November 24, 1854, is opposed to the 5th point decided in the principal case. This case is not reported. We extract the note of Mr. Blatchford, the Reporter: "Where a suit in a State Court is removed by a defendant into this Court under the 12th section of the Judiciary Act, no attachment of the property of the defendant by the State Court can hold that property after the removal of the suit into this Court, unless such attachment was the original process in the suit in the State Court. Where the suit in the State Court is commenced by summons, and the attachment is subsequently issued by it as a separate process, such an attachment is not an attachment by original process within said 12th section so as to hold the property attached after the removal of the suit into this Court." As this decision is not noticed by the Court, it is presumed that it was not cited on the argument. The proposition may therefore be thought to require further examination and adjudication.

T. W. D.

RECENT ENGLISH DECISIONS.

Court of Queen's Bench.—Trinity Term, 1862.

PYM, ADMINISTRATRIX, *vs.* THE GREAT NORTHERN RAILWAY CO.

Where a person is killed by the act of another, under such circumstances that the deceased, had he survived, could have maintained an action for the injury, an action can be maintained under the 9 & 10 Vict. c. 93, ss. 1 and 2, for the benefit of the surviving relatives, in respect of an injury arising from a pecuniary loss occasioned by the death, although the same pecuniary loss would not have resulted to the deceased had he lived.

The loss of the benefit of a superior education and the enjoyment of greater comforts and conveniences of life, is a pecuniary loss for which the wife and children of the person killed may maintain an action under the statute, where the income of the deceased wholly ceases with his death, or where the premature death prevents the deceased from having made the extra provision for his family which he might be reasonably expected to have made had he lived out his natural life.

Declaration by the plaintiff, the widow and administratrix of

Francis Leslie Pym, deceased, against the defendants,—stating that the defendants were carriers of passengers for hire on the Great Northern Railway, and that whilst the said F. L. Pym was a passenger he was killed through the negligence of the defendants' servants, and that the plaintiff sued for the benefit of herself, as widow, and of the children of the deceased, under the 9 & 10 Vict. c. 93.

Plea.—Not guilty.

At the trial, before COCKBURN, C. J., at the Sittings at Westminster after Trinity Term, 1861, it appeared that Mr. Pym was a passenger by the defendants' railway on the 23d of April, 1860, and an accident occurred on the railway from the negligence of one of the defendants' servants, whereby Mr. Pym was injured, and died the same day.

The deceased, at the time of his death, was forty-one years of age, and died intestate, leaving a widow (the plaintiff) and nine children—the eldest aged eleven years, and the youngest aged two months. The deceased was tenant for life of an estate in land, which had been settled at the time of his marriage, and to which he had succeeded about two months before his death. The net income derived from the estate was 3869*l.* per annum. By the provisions of the settlement the plaintiff became entitled, on the death of her husband, to a jointure of 1000*l.* per annum for her life, charged on the estate, and the eight younger children to a provision of 800*l.* a year, arising from a sum of 20,000*l.*, charged upon the estate, with interest at 4*l.* per cent. The estate itself, subject to the above charges, passed under the entail created by the settlement to the eldest son in fee. The deceased also left personal property to the amount of 3390*l.*, of which the plaintiff took, as widow, 1130*l.*, and each of the nine children 250*l.* The deceased was of no profession or business, and had no income or property other than that already mentioned.

The defendants' counsel contended that it was not shown that the plaintiff or any of the children had sustained any such loss or damage as was necessary to maintain the action, and that there was no evidence of any such loss or damage to be submitted to the

jury. The Lord Chief Justice refused to nonsuit, but he reserved leave to the defendants to move to enter a verdict or nonsuit on these points; and he directed the jury that to entitle the plaintiff to their verdict they must be satisfied, not only that the death of Mr. Pym was caused by the negligence of the defendants' servants, but also that the plaintiff and her children, or some of them, had sustained some pecuniary loss or damage by the death; and that if, after making allowance for what the deceased would naturally have expended on himself, they thought that a portion of his income, beyond the 1800*l.* a year, to which his widow and eight younger children became entitled at his death, would have been from time to time set aside by him for the benefit of his family, or appropriated to their education and advancement in life, and that advantages would thus have been secured to them, which by his death they would be deprived of,—that would constitute such pecuniary loss and damage as, coupled with the fact of the death of the deceased having been caused by the defendants' negligence, would entitle the plaintiff to a verdict.

The jury found a verdict for the plaintiff; assessing the damages at 13,000*l.*, and apportioning 1000*l.* for the widow herself, and 1500*l.* for each of the eight younger children.

A rule was obtained in Michaelmas Term, 1861, pursuant to the leave reserved to enter a verdict for the defendants, or a nonsuit, on the ground that there was no cause of action established by the evidence, or for a new trial on the ground of excessive damages.

Bovill, *Lush*, and *Garth* (Easter Term, May 12) showed cause. —The 9 & 10 Vict. c. 93, under which this action is brought, is entitled "An Act for compensating the families of persons killed by accidents;" and it gives a new cause of action to the survivors, and not a simple transfer of the right of action which the deceased would have had had he survived. This is pointed out in the judgment in *Blake* vs. *The Midland Railway Company*, 18 Q. B. Rep. 93, see pp. 109, 110; S. C. 21 Law J. Rep. (N. S.) Q. B. 233, see p. 237. No doubt an action will not lie under this act, unless an action would have lain at the suit of the injured person; but this

limit which is given in the 1st section is only a limit as to what shall be the cause of action, viz., such negligence as would have sustained an action by the deceased, but it has no reference to the measure or limit of the damages. Accordingly the jury, following the direction of the Lord Chief Justice, have given damages for the loss of the comforts and education and position of which the death of the head of the family deprived the plaintiff and her children, and for the loss of the pecuniary advantages which the wife and children might reasonably have expected to obtain from the husband and father laying by some part of his income for their benefit. The Court of Exchequer, in *Franklin* vs. *The South-Eastern Railway Company*, 3 Hurl. & N. 211, and the Court of Common Pleas, in *Dalton* vs. *The South-Eastern Railway Company*, 4 Com. B. Rep. N. S. 296, S. C. 27 Law J. Rep. (N. S.) C. P. 227, have agreed in deciding that a reasonable expectation of pecuniary advantage by the surviving relatives, and which has been frustrated by the death, may be taken into account in estimating the damages sustained by the relatives. [CROMPTON, J., referred to *Duckworth* vs. *Johnson*, 4 Hurl. & N. 653; S. C. 29 Law J. Rep. (N. S.) Exch. 25.] They then argued that the damages were not excessive.

Hawkins, *Phipson*, and *Holl*, in support of the rule.—There was no evidence of any cause of action. The 1st section of the Act shows that it is confined to cases in which the right of action has been taken away by the death of the injured person, and it therefore can only include such damages as might have been included in an action by the deceased. [BLACKBURN, J.—In the case, then, of an annuitant being killed, the family could not recover for the loss of the advantages of the annuity, as the annuitant himself could not have made this an item of damage. COCKBURN, C. J.—The argument for the defendants must go that length.] There is no anomaly in such a proposition, as no action in any case could have been maintained by the survivors previous to the Act. This is the first case in which the plaintiff has recovered where there has been no diminution of actual income caused by the death. Moreover, it is to be observed that the interpretation that has been put

on the statute is even less extensive than that contended for by the defendants: for the deceased could have maintained an action where no pecuniary damage had been sustained by him, and yet the Courts have decided that the survivors can only recover for pecuniary damage. [COCKBURN, C. J.—That is from the terms of the 2d section; the two sections must be read together. The right of action by the 1st section is confined to such cases as would have entitled the person injured to sue the defendants for damages; and the 2d section confines the damages to be recovered by the survivors to pecuniary loss alone.] Even conceding that interpretation, the damages here are too remote; they are caused by the circumstances of the family, and do not result merely from the death caused by the defendants' negligence. *Hadley* vs. *Baxendale*, 9 Exch. Rep. 341; S. C. 23 Law J. Rep. (N. S.) Exch. 178. They then argued that the damages were excessive.

Cur. adv. vult.

COCKBURN, C. J. (June 17), delivered the judgment of the Court (COCKBURN, C. J., CROMPTON, J., BLACKBURN, J., and MELLOR, J.). —In this case it was objected on the part of the defendants, first, that the plaintiff was not entitled to recover in point of law; secondly, that even if the plaintiff was entitled to recover, the damages were excessive.

The action was brought by the widow and administratrix of a gentleman of the name of Pym, who had lost his life by an accident on the defendants' railway, occasioned by the negligence of their servants. The deceased was tenant for life of a settled estate in land, the value of which was a little short of 4000*l.* a year. By the provisions of the settlement a jointure of 1000*l.* a year was settled on his wife, and a sum of 20,000*l.* was secured to the younger children on his death. The estate itself passed under the entail to his eldest son. Mr. Pym died intestate, leaving personal property amounting to about 3400*l.* He left besides his eldest son eight younger children, the eldest under twelve years of age; and the action was brought by his widow, under the provisions of the 9 & 10 Vict. c. 93, on her own behalf and that of her younger children,

to recover compensation for the pecuniary loss sustained by them in consequence of his death. The heads of loss mainly relied on by the plaintiff were, first, the loss of the advantages of superior education, and of the social position and personal comfort of which the father's income, had he lived, would have secured the benefit and enjoyment to the family; secondly, the loss of that provision which it was to be presumed that the deceased, as a prudent father of a family, would have made, by saving from his income, for the benefit of his wife and younger children. The jury, who were properly directed, if they considered the fact of negligence as established, to estimate the damage with reference to pecuniary loss alone, assessed the damages at 13,000*l.*, being 1000*l.* for the widow, and 1500*l.* for each of the children.

It is objected on the part of the defendants that, independently of the amount of damages, the verdict cannot stand, first, because the case does not come within the terms of the statute; secondly, because the loss, even if a pecuniary loss at all, is in the present instance too uncertain and remote to be properly the subject of compensation under the statute.

In support of the first of these grounds of objection the language of the 1st section of the Act was relied on, and it was contended that, inasmuch as, if the death had not ensued from the effects of the accident, the deceased would have had no right of action against the Company in respect of a pecuniary loss arising only on his death, this action could not be maintained by his representative, inasmuch as the right of action is given only where the deceased could have maintained an action if death had not ensued. We were at first struck with this argument, but, on consideration, we are of opinion that the condition, that the action could have been maintained by the deceased if death had not ensued, has reference, not to the nature of the loss or injury sustained, but to the circumstances under which the bodily injury arose, and the nature of the wrongful act, neglect, or default complained of. Thus, if the deceased had by his own negligence materially contributed to the accident whereby he lost his life, as he, if still living, could not have maintained an action in respect of any bodily injury, notwith-

standing there might have been negligence on the part of the defendants, the present action could not have been supported. But, supposing the circumstances of the negligence to have been such, that if death had not ensued the deceased might have brought his action in respect of any injury arising to him from it, we are of opinion that his representatives may maintain an action in respect of an injury arising from a pecuniary loss occasioned by the death, although that pecuniary loss would not have resulted from the accident to the deceased had he lived. This being the view we take of the effect of the condition contained in the Act, we are of opinion that this objection to the plaintiff's right of action fails.

As to the second head of objection, we are of opinion that, as the benefit of education and the enjoyment of the greater comforts and conveniences of life depend on the possession of pecuniary means to procure them, the loss of these advantages is one which is capable of being estimated in money, in other words, is a pecuniary loss, and therefore the loss of such advantages arising from the death of a father, whose income ceases with his life, is an injury in respect of which an action can be maintained on the statute. *A fortiori*, the loss of a pecuniary provision, which fails to be made owing to the premature death of a person by whom such provision would have been made had he lived, is clearly a pecuniary loss, for which compensation may be claimed.

It is true that it must always remain matter of uncertainty whether the deceased person would have applied the necessary portion of income in securing to his family the social and domestic advantages of which they are said to have been deprived b his death, still more, whether he would have laid by any and what portion of his income to make provision for them at his death. But, as it has been established by the cases decided upon the statute, that if there be a reasonable expectation of pecuniary advantage, the extinction of such expectation by negligence, occasioning the death of the party from whom it arose, will sustain the action, it is for a jury to say, under all the circumstances, and taking into account all the uncertainties and contingencies of the particular case, whether there was such a reasonable and well-

founded expectation of pecuniary benefit as can be estimated in money, and so become the subject of damages in such an action.

The matter having in the present instance been thus left to the jury, and the issue having been found by them for the plaintiff, we see no reason for disturbing the verdict so far as the right of the plaintiff to maintain the action in point of law is concerned.

We are not insensible to the argument *ab inconvenienti*, founded on the very serious consequences which might ensue to a railway company in the event of a fatal accident happening from negligence to an individual of very large fortune. But we think this is rather for the consideration of the Legislature, as to whether any limit should be put to the liability, than for us. We see no difference in principle between such a case as the present and that of the claim by a family of an artisan for the loss of advantages arising from their father's earnings, in which case it is not doubted that the action may be maintained.

As regards the amount of damages, we are led to think that the sum awarded by the jury is too large. Considering that by the settlement provision is already made on the father's death for the widow and children, that it is uncertain how far the deceased would have added to this provision by saving from his income for their benefit, and that any such provision, whether under the settlement or otherwise, would not have come to them till the father's death, while, on the contrary, both the money secured by the settlement and the compensation awarded by the jury now become realized at once, we think the amount of the damages, so far as the children are concerned, too large. We suggest that while the sum awarded to the widow should stand, the amount awarded to each of the children should be reduced from 1500*l.* to 1000*l.* If this should be assented to, on the part of the plaintiff, the verdict will be reduced to 9000*l.*, and the rule will be discharged; if not, the rule will be absolute for a new trial, on the ground that the damages found by the jury are excessive.

The plaintiff having agreed to the reduction of the damages,

Rule discharged.